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UNIQUE REPORTING SITUATIONS

A. Temporary Help Company

1. Definition

A "Temporary Help Company" is defined as a leasing company or temporary help service which contracts with clients or customers to supply individuals to perform services for the client or customer and which both under contract and in fact:

- a. Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality and price of the services;
- b. Determines assignments or reassignments of individuals to its clients or customers, even if the individuals retain the right to refuse specific assignments;
- c. Sets the rate of pay of the individuals, whether or not through negotiation;
- d. Pays the individuals from its account or accounts; and
- e. Hires and terminates individuals who perform services for the clients or customers.

2. Determining Employer Liability

A Temporary Help Company is the employer of the individual who the company engages in employment to perform service for a client or customer of the company.

Officers of a client corporation can not be employees of the Temporary Help Company. They must be reported separately under the client's own UI accounts.

B. Professional Employer Organization

1. Definition

Professional employer organization means any person who contracts to provide the non-temporary, ongoing employee workforce of a client and who under contract and in fact:

- a. Has the right to hire and terminate the employees who perform services for the client and to reassign the employees to other clients;
- b. Sets the rate of pay of the employees, whether or not through negotiations;
- c. Has the obligation to and pays the employees from its own accounts;
- d. Has the general right of direction and control over the employees, including corporate officers, which right may be shared with the client to the degree necessary to allow the client to conduct its business, meet any fiduciary responsibility, or comply with any applicable regulatory or statutory requirements;
- e. Assumes responsibility for the unemployment insurance coverage of the employees, files all required reports, pays all required contributions or reimbursements due on the wages of the employees, and otherwise complies with all of the provisions of this chapter that are applicable to employers on behalf of the client;
- f. Has the obligation to establish, fund and administer employee benefit plans for the employees; and
- g. Provides notice of the employee leasing arrangement to the employees.

Employers meeting all of these requirements are required to provide a list of all of the clients to the Department.

C. Common Paymaster

1. Definitions

a. Common Paymaster

A common paymaster of a group of related corporations is any member thereof that pays concurrent employees of itself and one or more of the related corporations and is responsible for keeping the payroll records with respect to those concurrently employed individuals.

b. Concurrent Employment

Concurrent employment means the existence of an employment relationship between an individual and two or more corporations at the same time.

c. Related Corporations

Corporations are related for the entire calendar quarter if, at any time in that quarter, they satisfy any of the following four tests:

- (1) The corporations are members of a controlled group of corporations.
- (2) If the corporations do not issue stock, either 50% or more of one corporation's governing body are members of the other corporation's governing body, or holders of 50% or more of the voting power to select such members are concurrently the holders of more than 50% of that power in respect to the other corporation.
- (3) Fifty percent or more of one corporation's officers are concurrently officers of the other corporation.
- (4) Thirty percent or more of one corporation's employees are concurrently employees of the other corporation.

d. Payrolling

Payrolling is the practice of one entity reporting the wages and paying the UI tax on employees, who are directed and controlled by another entity. This practice is not allowed under the Wisconsin Unemployment Insurance Law.

2. Qualifying Requirements

Employers paying any wages through a common paymaster should report those wages through the common paymaster. To qualify as a common paymaster the following requirements must be met:

- The corporations must be related, and
- There must be concurrent employment of one or more employees by the paymaster and one or more of the related corporations; and the paymaster corporation is responsible for keeping the payroll records with respect to concurrently employed individuals.

Any of the concurrently employing related corporations could be designated as the common paymaster. The common paymaster reports the wages of the employees that work concurrently with it and one or more of the other related corporations.

If any the above conditions are not met, then each employing unit (separate corporation) must report their own employment under their own UI account.

D. Multi-State Employment

When your employee performs services in Wisconsin and some other state, the employee will be covered and reportable to Wisconsin if one of four tests specified in Section 108.02(15) of the statutes applies. The four tests used by Wisconsin are:

1. Localization

Your employee's services are in covered employment and "localized" in Wisconsin if all or most of the services are performed in this state with only isolated, incidental or temporary services performed outside of Wisconsin.

2. Base of Operations

If the first test does not apply, your employee's total services are covered employment in Wisconsin if some of their services are performed in this state and their "base of operations" is in Wisconsin. (Base of operations is interpreted as the place of more or less permanent nature from which your employee starts work, to which your employee customarily returns and to which you may direct instructions to your employee. It may be a branch office or the employee's residence.)

3. Place of Direction and Control

If the first two tests do not apply, your employee's total services are covered employment in Wisconsin if some of their services are performed in Wisconsin and the place from which you exercise general direction and control over the employee is in Wisconsin.

4. Residence of Employee

If the first three tests do not apply, your employee's total services are covered employment in Wisconsin if some of their services are performed in this state and their residence is in Wisconsin.

If, after applying all these tests you find a particular individual's services not covered in Wisconsin, you may elect to cover them in Wisconsin by filing a reciprocal agreement between Wisconsin and the other state involved. Certain states will not approve such an election if the individual has residence in that state and provides some services in that state.

Similar tests appear in the unemployment insurance laws of a majority of the states in an effort to avoid conflicts and

overlapping coverage between states. However, differences in interpretation do exist among a few states.

Certain employment of United States citizens working for American employers in foreign lands (except Canada) may also be reportable for unemployment purposes to this state. Also, aliens working in Wisconsin are reportable for Unemployment Insurance purposes.

E. LLC Electing to be Treated as a Corporation

If your business legal entity is an LLC and you have elected to file as a corporation with the IRS, you must inform this department of that and provide written documentation showing that election. Remember, by making this election, you must report and pay unemployment tax on all wages, including the LLC members. This is critical to avoid any certification problems between your State and Federal unemployment taxes.

If you have questions regarding this, please call (608) 261-6700.

If you have any questions regarding Unique Reporting Situations, contact us at:

E-mail: taxnet@dwd.state.wi.us

Internet:

www.dwd.state.wi.us/uitax/default.htm

or

Bureau of Tax & Accounting
Division of Unemployment Insurance
P.O. Box 7942
Madison, Wisconsin 53707

or

Telephone: (608) 261-6700
FAX: (608) 267-1400

Deaf, hearing or speech-impaired callers may reach us through WI TRS.